

<p>Joshua D. Bendor, 031908 Brandon T. Delgado, 035924 OSBORN MALEDON, P.A. 2929 North Central Ave., Suite 2100 Phoenix, Arizona 85012-2793 (602) 640-9000 jbendor@omlaw.com bdelgado@omlaw.com</p> <p>Orion Danjuma (<i>pro hac vice to be filed</i>) NY Reg No. 4942249 PROTECT DEMOCRACY PROJECT 82 Nassau St. #601 New York, NY 10038 Tel: (202) 579-4582 orion.danjuma@protectdemocracy.org</p> <p>Rachel F. Homer (<i>pro hac vice</i>) DC Bar No. 1045077 PROTECT DEMOCRACY PROJECT 2020 Pennsylvania Avenue NW, #163 Washington, DC 20006 Tel: (202) 579-4582 rachel.homer@protectdemocracy.org</p> <p>Attorneys for Plaintiff</p>	<p>Benjamin L. Berwick(<i>pro hac vice</i>) MA Bar No. 679207 PROTECT DEMOCRACY PROJECT 15 Main Street, Suite 312 Watertown, MA 02472 Tel: (202) 579-4582 ben.berwick@protectdemocracy.org</p> <p>Jared Davidson (<i>pro hac vice to be filed</i>) LA Bar No. 37093 PROTECT DEMOCRACY PROJECT 3014 Dauphine Street, Suite J New Orleans, LA 70117 Tel: (202) 579-4582 jared.davidson@protectdemocracy.org</p>
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

League of Women Voters of Arizona,

Plaintiff,

vs.

Lions of Liberty LLC; Yavapai County
Preparedness Team; Jim Arroyo, Lucas
Cilano; Nicholas Cilano; Brian Mounsey;
Toby Fox; Bruce Mounsey; James Johnson;
Melody Jennings; Clean Elections USA;
John Does 1-10,

Defendants.

No. CV-22-08196-PCT-MTL

**MOTION TO FILE THE LODGED
DECLARATION UNDER SEAL**

Pursuant to Local Rule 5.6, Plaintiff League of Women Voters of Arizona
(“League”) moves to file under seal the Declaration that it Lodged alongside this Motion

1 (“the Lodged Declaration”) in support of the League’s Motion for a Temporary
2 Restraining Order and Preliminary Injunction (“TRO Motion”).

3 Contemporaneously with this Motion, Plaintiff has filed a redacted version of the
4 Lodged Declaration on the public record. The only items redacted from the publicly-filed
5 version are the references to the declarant’s name and identifying details. This Motion
6 simply asks the Court for the Lodged Declaration, which includes the declarant’s name
7 and identifying details, to be filed under seal.

8 **INTRODUCTION**

9 On October 25, 2022, the League filed a case alleging unlawful voter
10 intimidation against Defendants Lions of Liberty LLC, Yavapai County Preparedness
11 Team, their officers, Melody Jennings, and Clean Elections USA. The League’s
12 members as well as non-League members have been confronted by Defendants and their
13 followers surveilling drop boxes throughout Yavapai County and Maricopa County,
14 leading to these voters and other individuals who have not yet voted to become
15 intimidated and scared to vote.

16 Today, Plaintiff filed its TRO Motion pursuant to Federal Rule of Civil
17 Procedure 65, asking the Court to bar Defendants, their co-conspirators, and all of their
18 volunteers and agents, from engaging in unlawful voter intimidation at or near all drop
19 boxes in Yavapai County and Maricopa County. Along with TRO Motion, Plaintiff is
20 filing declarations from people who have encountered Defendants while attempting to
21 exercise their constitutional right to vote.

22 Plaintiff now moves to file one such declaration, the Lodged Declaration, under
23 seal so that the declarant’s name and identifying details do not become public. There
24 are compelling reasons for Plaintiff’s motion to seal the Lodged Declaration, the most
25 important of which is to protect the safety and privacy of the declarant, who has already
26 been targeted in person and slandered online by Defendant Melody Jennings and her
27 associates.

STATEMENT OF FACTS

The Lodged Declaration was written by a person who went with his wife to a ballot drop box at the Maricopa Juvenile Court in Mesa the evening of October 17, 2022, to fulfill what he refers to as his “civic duty” to vote. Decl. ¶¶ 3-4. When he arrived, he encountered a group of six to nine men and women in the parking lot, nearby the drop box. *Id.* ¶ 5. Some of these individuals sat in camping chairs, and others stood nearby; all were facing the drop box, watching voters deposit their ballots. *Id.* ¶ 5. These individuals were filming and photographing people voting at the drop box. *Id.* ¶ 6.

Declarant’s wife wanted to leave upon seeing these individuals. *Id.* ¶ 7. She did not even want to stay to drop off her ballot because she was scared. *Id.* But the declarant insisted on getting out of the car to drop off both his ballot and his wife’s while she stayed in the car. *Id.* ¶ 8.

Declarant’s wife was worried that these individuals would use their cameras to zoom in on their phone numbers on their ballots and then harass them. *Id.* ¶ 9. To prevent that from happening, the declarant put the two ballots under his shirt when he got out of the car. *Id.*

As he got out of the car, four of the people in the camping chairs came up to him, followed him, and took pictures of him. *Id.* ¶ 10. Two of the people asked if he was a “mule.” *Id.* ¶ 11. One person attempted to take pictures of his car’s license plate. *Id.* ¶ 12. Another person told him that the group was “hunting mules.” *Id.* ¶ 13. The declarant became frustrated that they were accusing him of doing something illegal, and he made a crude gesture and crude remark to them. *Id.* ¶ 14. After depositing the two ballots and returning to his car, he reversed out of the parking lot so that he did not need to drive past the group. *Id.* ¶ 15. But then one of the self-proclaimed “mule-hunters” got into his or her car and followed the declarant’s car onto the main road, attempting to take a picture of the declarant’s license plate. *Id.* ¶ 16.

1 The declarant reported this incident to the Arizona Secretary of State; the media
 2 soon obtained the complaint made to the Secretary of State, as well as a surveillance
 3 video of the interaction. *Id.* ¶¶ 17-18. The declarant did not talk with the media. *Id.* at
 4 ¶ 18. As of this filing, his name and likeness have not been made public by the
 5 Secretary of State or media. *Id.* at ¶¶ 17-18; *see also* Ex. A to Decl. (Secretary of State
 6 Complaint) (showing that the declarant’s name was redacted); Ex. B to Decl.
 7 (Surveillance Video) (showing that the declarant’s image was blurred).

8 Since the incident, however, Defendant Jennings and a person named Alice
 9 Bagley Mercer have posted about the declarant on social media. Decl. ¶ 19; Ex. D to
 10 Decl.; Ex. E to Decl.; Ex. F to Decl. They have posted pictures of his car and his back;
 11 they have publicly called him a “mule”; and they have said that they have to “regroup”
 12 due to the incident to ensure they have people “at all angles now” to photograph voters.
 13 Ex. D to Decl. They discussed on social media that the declarant “talk[ed] smack to
 14 us,” and they publicly called his actions a “disgusting” example of “how our elections
 15 are corrupt.” *Id.* Defendant Jennings has referred to the declarant as “This guy.” Ex. E
 16 to Decl. And she has accused of him “avoid[ing] plate detection,” “showing his back,”
 17 and “pull[ing] ballots out of his shirt.” *Id.* Based on this encounter, she has called on
 18 her followers: “I need people there tonight to help my people. Lots of you!” *Id.* In
 19 another post, she made a “Public statement” about the incident. Ex. F. to Decl. The
 20 statement implies that those affiliated from Clean Elections USA were at the drop box
 21 surveilling that night. *Id.* Her post denies that they were the ones who spoke to the
 22 declarant. *Id.*

23 The declarant and his wife are scared that these individuals will harass and
 24 threaten their safety if they find out their names from a public declaration. *Id.* ¶ 20.

25 LEGAL AUTHORITY

26 The Ninth Circuit has held that documents in support of a motion, like the one
 27 contemplated here, can be sealed when “compelling reasons” exist. *Ctr. for Auto Safety*
 28

1 *v. Chrysler Grp. LLC*, 809 F.3d 1092, 1098 (9th Cir. 2016). “In general, ‘compelling
 2 reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing
 3 court records exist when such ‘court files might have become a vehicle for improper
 4 purposes,’ such as the use of records to gratify private spite, promote public scandal,
 5 [and] circulate libelous statements[.]” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d
 6 1172, 1179 (9th Cir. 2006) (internal citations omitted).

7 Additionally, the Ninth Circuit has held that there may be “compelling interest”
 8 in protecting a person’s “safety and privacy” such that redacting the person’s name from
 9 a public affidavit is appropriate while the unredacted affidavit remains sealed. *In re*
 10 *Ares Armor*, 687 F. App’x 622 (9th Cir. 2017). In *Ares Armor*, the Ninth Circuit held
 11 that this kind of redaction was particularly appropriate where there was an online
 12 posting about the affiant, and the online posts had implied or encouraged violence. *Id.*
 13 at 624-625. In such a circumstance, redacting the person’s name from an otherwise-
 14 public affidavit, and keeping the version with the affiant’s name sealed, is the least
 15 “restrictive means available to safeguard that [compelling] interest in [safety and
 16 privacy].” *Id.*

17 Here, Defendant Jennings and Alice Bagley Mercer have already defamed and
 18 slandered the declarant by falsely accusing him of doing something illegal. They have
 19 already publicized the incident in an attempt to prove a debunked conspiracy theory.
 20 The declarant is credibly concerned that a public declaration that includes his name and
 21 identifying details could lead to Defendant Jennings, Alice Bagley Mercer, their
 22 followers, and other individuals to then publicize his name for “private spite,” “public
 23 scandal,” and further “libelous statements” accusing him of being a “mule.”

24 More importantly, the declarant’s safety and privacy are at risk—a compelling
 25 reason to seal his identity. Like the online postings in *Ares Armor*, the social media
 26 posts here imply and encourage violence: they call on militant followers to surveil more
 27 drop boxes and implicitly threaten the declarant himself. Ex. D to Decl.; Ex. E to Decl.;

1 Ex. F to Decl. Defendant Jennings has called on her followers to “help” and says that
2 she needs “lots of” followers to come out due to the incident with the declarant. Ex. E
3 to Decl. And these social media posts have explicitly discussed the declarant as a
4 “mule” or “this guy,” reasonably causing the declarant concern that if the Defendants
5 and their followers obtain his actual name, they will be able to find out more
6 information about him—potentially including his telephone number and address—
7 leading to further (and escalating) harassment and privacy violations.

8 All in all, the least restrictive means of safeguarding the declarant’s safety and
9 privacy and preventing further libel is to allow his Lodged Declaration to be filed under
10 seal while a redacted copy is filed publicly.

11 **III. CONCLUSION**

12 For the foregoing reasons, the League respectfully requests permission to file the
13 Lodged Declaration under seal in accordance with Local Rule 5.6(d).

1 DATED this 28th day of October, 2022.

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3 OSBORN MALEDON, P.A.

4 By s/ Joshua D. Bendor

5 Joshua D. Bendor
6 Brandon T. Delgado
7 2929 North Central Avenue, Suite 2100
8 Phoenix, Arizona 85012-2793

9 Orion Danjuma (*pro hac vice to be filed*)
10 PROTECT DEMOCRACY PROJECT
11 82 Nassau St. #601
12 New York, NY 10038

13 Rachel F. Homer (*pro hac vice*)
14 PROTECT DEMOCRACY PROJECT
15 2020 Pennsylvania Avenue NW, #163
16 Washington, DC 20006

17 Benjamin L. Berwick(*pro hac vice*)
18 PROTECT DEMOCRACY PROJECT
19 15 Main Street, Suite 312
20 Watertown, MA 02472

21 Jared Davidson (*pro hac vice to be filed*)
22 PROTECT DEMOCRACY PROJECT
23 3014 Dauphine Street, Suite J
24 New Orleans, LA 70117

25 Attorneys for Plaintiff
26
27
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